

**Assembly Bill No. 147**

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Passed the Assembly September 9, 2009

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*Chief Clerk of the Assembly*

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Passed the Senate September 3, 2009

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 25214.10.1 of the Health and Safety Code, relating to hazardous waste.

## LEGISLATIVE COUNSEL'S DIGEST

AB 147, Saldana. Hazardous waste: electronic waste.

(1) Existing law requires the Department of Toxic Substances Control to adopt regulations to prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, due to the presence of certain heavy metals. Existing law requires these regulations to take effect January 1, 2007, or on or after the date that the Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003 (Directive 2002/95/EC), takes effect, whichever date is later. Existing law defines the term “electronic device,” for purposes of those provisions, to have the same meaning, with reference to the Electronic Waste Recycling Act of 2003, as “covered electronic device” which is defined as a video display device that is identified by the department, pursuant to specified regulations, as a presumed hazardous waste when discarded.

A violation of the hazardous waste control laws, including a regulation adopted pursuant to those laws, is a crime.

This bill would require a manufacturer of an electronic device, at the request of the department, based on the department's reasonable cause, as the bill would define that term, to believe that a specific electronic device identified by the department is prohibited from sale, to prepare and submit to the department within 28 days of receipt of the request, documentation or other information typically maintained by the manufacturer's industry under Directive 2002/95/EC, showing that the electronic device specifically identified by the department and sold or offered for sale by that manufacturer is not prohibited from sale. The bill would authorize the department to extend the 28-day response time at the request of the manufacturer.

The bill would require the department to treat as confidential any information that is a trade secret, as defined, that is provided to the department pursuant to the bill's requirements, and that is identified as a trade secret at the time of submission, in the same manner as the procedures adopted by the department with regard to hazardous waste handling and disposal. The department would be required to make available, pursuant to the California Public Records Act, any information that is not a trade secret or that is not identified as a trade secret.

Because a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 25214.10.1 of the Health and Safety Code is amended to read:

25214.10.1. (a) For purposes of this section, the following definitions shall apply:

(1) "Electronic device" means a video display device, as defined in subdivision (u) of Section 42463 of the Public Resources Code, with a screen size of greater than four inches.

(2) "Covered electronic device," "manufacturer," and "retailer" have the same meaning as those terms are defined in Section 42463 of the Public Resources Code.

(3) "Reasonable cause" means knowledge of any of the following:

(A) Hazardous substance enforcement activities by another state or country for the same or similar electronic device that indicate that the electronic device may be prohibited from sale pursuant to Section 25214.10.

(B) Conflicting publicly available documentation regarding hazardous substances for a specific electronic device that indicates

that the electronic device may be prohibited from sale pursuant to Section 25214.10.

(C) Homogenous material level testing of a specific electronic device regarding hazardous substances, conducted according to the International Electrotechnical Commission's IEC 62321 or equivalent method, that indicates that one or more homogenous materials may result in the electronic device being prohibited from sale pursuant to Section 25214.10.

(D) Information from other companies or competitors, if it is a documented allegation, based on homogenous materials reports, for a specific electronic device, that indicate that the electronic device may be prohibited from sale pursuant to Section 25214.10.

(E) Other comparable justification to question whether a specific electronic device is prohibited from sale pursuant to Section 25214.10.

(4) "Trade secret" has the same meaning as defined in Section 25173.

(b) The department shall adopt regulations that identify electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter.

(c) (1) Except as provided in subdivision (e), a manufacturer of an electronic device that is identified in the regulations adopted by the department shall send a notice in accordance with the schedule specified in subparagraph (A) or (B), as applicable, of paragraph (3), to any retailer that sells that electronic device manufactured by the manufacturer. The notice shall identify the electronic device, and shall inform the retailer that the electronic device is a covered electronic device and is subject to a fee in accordance with subdivision (d).

(2) A manufacturer subject to this subdivision shall also send a copy of the notice to the State Board of Equalization.

(3) The notice required by this subdivision shall be sent in accordance with the following schedule:

(A) On or before October 1, 2004, the manufacturer shall send a notice covering any electronic device manufactured by that manufacturer that is identified in the regulations adopted by the department on or before July 1, 2004, that identify the electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter.

(B) On or before April 1, 2005, and on or before every April 1 of each year thereafter, the manufacturer shall send a notice covering any electronic device manufactured by that manufacturer identified in the regulations adopted by the department pursuant to subdivision (b) on or before December 31 of the prior year.

(4) If a retailer sells a refurbished covered electronic device, the manufacturer is required to comply with the notice requirement of this subdivision only if the manufacturer directly supplies the refurbished covered electronic device to the retailer.

(d) (1) Except as provided in subdivision (e), a covered electronic device that is identified in the regulations adopted, on or before July 1, 2004, by the department, that identify electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter shall, on and after January 1, 2005, be subject to Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the fee imposed pursuant to Section 42464 of the Public Resources Code.

(2) Except as provided in subdivision (e), a covered electronic device identified in the regulations adopted by the department, pursuant to subdivision (b), shall, on and after July 1 of the year subsequent to the year in which the covered electronic device is first identified in the regulations, be subject to Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the fee imposed pursuant to Section 42464 of the Public Resources Code.

(e) (1) If the manufacturer of an electronic device that is identified in the regulations adopted by the department pursuant to subdivision (b) obtains the concurrence of the department that an electronic device, when discarded, would not be a hazardous waste, in accordance with procedures set forth in Section 66260.200 of Title 22 of the California Code of Regulations, the electronic device shall cease to be a covered electronic device and shall cease to be subject to subdivisions (c) and (d) on the first day of the quarter that begins not less than 30 days after the date that the department provides the manufacturer with a written nonhazardous concurrence for the electronic device pursuant to this subdivision. A manufacturer shall notify each retailer, to which that manufacturer has sold a covered electronic device, that the device has been determined pursuant to this subdivision to be

nonhazardous and is no longer subject to a covered electronic recycling fee.

(2) No later than 10 days after the date that the department issues a written nonhazardous concurrence to the manufacturer, the department shall do both of the following:

(A) Post on the department's Internet Web site a copy of the nonhazardous concurrence, including, but not limited to, an identification and description of the electronic device to which the concurrence applies.

(B) Send a copy of the nonhazardous concurrence, including, but not limited to, an identification and description of the electronic device to which the concurrence applies, to the California Integrated Waste Management Board and the State Board of Equalization.

(f) (1) A manufacturer, at the request of the department, based on the department's reasonable cause to believe that a specific electronic device identified by the department is prohibited from sale pursuant to Section 25214.10, shall prepare and submit to the department within 28 days of receipt of the request, documentation or other information typically maintained by the manufacturer's industry under Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, showing that the electronic device specifically identified by the department and sold or offered for sale by that manufacturer is not prohibited from sale pursuant to Section 25214.10. The department may extend the 28-day response time upon request of the manufacturer.

(2) The department's request pursuant to paragraph (1) shall focus only on the specific substance in a specific product part that gives rise to reasonable cause to believe that the specific electronic device is prohibited from sale pursuant to Section 25214.10.

(3) A manufacturer's failure to submit documentation required by this subdivision is not grounds for prohibiting the sale of an electronic device pursuant to Section 25214.10.

(4) The department shall treat as confidential any information provided pursuant to this section that is a trade secret and that is identified as a trade secret at the time of submission by a manufacturer, in the same manner as the procedures adopted by the department pursuant to Section 25173 with regard to hazardous waste handling and disposal. Any information that is not a trade

secret, or that is not identified by the manufacturer as a trade secret, shall be made available to the public upon request pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(g) Notwithstanding Section 42474 of the Public Resources Code, a fine or penalty shall not be assessed on a retailer who unknowingly sells, or offers for sale, in this state a covered electronic device for which the covered electronic waste recycling fee has not been collected or paid, if the failure to collect the fee was due to the failure of the State Board of Equalization to inform the retailer that the electronic device was subject to the fee.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved \_\_\_\_\_, 2009

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*Governor*